

OMB No. 0651-0050 (Exp. 4/30/2009)

The table below presents the data as entered.

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Office has repeatedly recognized similar marks as sufficiently suggestive to be registered on the Principal Register. Thus, Applicant respectfully requests that the Trademark Office reconsider the refusal based on Section 2(e)(1) and allow this mark to proceed to publication. A notice of appeal has been filed in conjunction with this request.

The present application now seeks registration of the composite mark BETTER PRICE TOBACCO and Design, which includes stylized font with concentric circles and a raised-ribbon graphic design, for use in connection with cigarette making machines, rolling machines and injecting machines, cigarette papers, filters and tubes, and kits for making cigarettes. When considering Applicant's mark, it is not appropriate to dissect the mark into component parts; rather, it must be considered in its entirety. *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1174 (Fed. Cir. 2004). Applicant respectfully suggests that, when viewed in its proper scope, Applicant's mark creates a distinctive commercial impression that acts as a source identifier. In particular, the graphic design elements combined with the stylized font create a composite mark that conveys a unique and distinctive commercial impression. Therefore, Applicant's composite mark is suitable for registration on the Principal Register.

Thus, when appropriately considering the mark, Applicant believes it is suggestive of the goods of the present application and should the mark therefore be registered. To be sure, if a mark requires "imagination, thought, and perception" to determine the nature of the goods, it is considered suggestive and not merely descriptive. *In re Steelbuilding.com*, 415 F.3d 1293, 1297 (Fed. Cir. 2005). In this case, the overall commercial impression of Applicant's composite mark requires the consumer to use imagination, thought and perception to determine the specific nature of the goods at hand, which include cigarette making machines, rolling machines and injecting machines, cigarette papers, filters and tubes, and kits for making cigarettes. The design mark, composed of the stylized BETTER PRICE TOBACCO wording with circle and ribbon graphic elements, does not immediately describe Applicant's goods, but rather suggests a smoking-related product with a good value. Thus, Applicant's mark when applied to the present goods of the application should be considered suggestive, not merely descriptive.

Furthermore, the mark should not be refused registration as merely a lauditorily descriptive

term. The Trademark Office has repeatedly recognized similar marks and found them not to be descriptive, placing them on the Principal Register without disclaimers or requiring proof of acquired distinctiveness. For example, "LOWEST PRICE FIGHTER" was determined sufficiently distinctive for use in connection with cigarettes (Reg. No. 3,259,428), just as "PREMIUM SMOKE AT AN HONEST PRICE" was held distinctive for "tobacco cigarettes" (Reg. No. 2,562,059). Similarly, "BETTER GOLF. BETTER PRICE." is registered for use in connection with golf-related products (Reg. No. 3,417,679), and "BETTER INSURANCE. BETTER PRICES. BETTER VALUE." is registered for use in connection with insurance services (Reg. No. 3,279,222). In the same way, "BETTER PARTS. BETTER PRICES." constitutes a sufficiently distinctive mark for automotive parts, just as "BETTER PRODUCTS AT BETTER PRICES" has been determined distinctive for Christmas trees and decorations. *See also* Reg. No. 3,171,529 ("INCREDIBLE SUSHI AT INEXPENSIVE PRICES" for restaurant services) and Reg. No. 3,198,682 ("SUPER COSTUME SELECTIONS AT SUPER LOW PRICES!" for online retail store services featuring costumes). (Copies of these registration records are attached hereto as Exhibit A). So, too, should Applicant's mark be considered sufficiently distinctive for placement on the Principal Register.

In light of the foregoing, Applicant respectfully requests the Examining Attorney to reconsider the final refusal to register Applicant's mark and withdraw the rejection under Section 2(e)(1), and allow the application proceed to publication.

Dated: September 2, 2009

Respectfully submitted,

By: /Antony J. McShane/

Antony J. McShane
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EVIDENCE SECTION

EVIDENCE FILE NAME(S)

ORIGINAL
PDF FILE

http://tgate/PDF/RFR/2009/09/02/20090902175500394911-77442883-001_001/evi_3811514866-172236842_-_Exhibit_A.pdf

CONVERTED PDF FILE(S) (8 pages)	\\TICRS\EXPORT\IMAGEOUT\774\428\77442883\xml5 \RFR0002.JPG
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DESCRIPTION OF EVIDENCE FILE	Exhibit A
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Antony J McShane/
SIGNATORY'S NAME	Antony J McShane
SIGNATORY'S POSITION	Attorney of Record
DATE SIGNED	09/02/2009
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	NO
FILING INFORMATION SECTION	
SUBMIT DATE	Wed Sep 02 17:55:00 EDT 2009
TEAS STAMP	USPTO/RFR-38.115.148.66-2 0090902175500394911-77442 883-4302d227a03016af501e6 bda719d94391-N/A-N/A-2009 0902172236842868

Request for Reconsideration after Final Action**To the Commissioner for Trademarks:**

Application serial no. 77442883 has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

IN THE UNITED STATES PATENT AND TRADEMARK OFFICEp

In re Application of: Top Tobacco, LP)	
)	
Mark: Better Price Tobacco (& Design))	Law Office: 115
)	
Serial No.: 77/442883)	Examining Attorney:
)	Janice L. McMorro
Applicant: Top Tobacco, LP)	
)	
Mailing Date of)	
Office Action: March 3, 2009)	
)	
Filing Date: April 8, 2008)	

**REQUEST FOR RECONSIDERATION
IN CONJUNCTION WITH NOTICE OF APPEAL**

In the Office Action relating to the above-captioned mark, the Examining Attorney refused to register Applicant's design mark pursuant to Trademark Act Section 2(e)(1) on the grounds that the mark is laudatorily descriptive of a feature of Applicant's goods. Since the issuance of the Office Action, however, Applicant has divided its application, placing "tobacco" in a separate application, Serial No. 77/977517. Applicant therefore believes that the subject mark, when viewed in its entirety, is not merely descriptive of the remaining goods in the present application. Moreover, the Trademark Office has repeatedly recognized similar marks as sufficiently suggestive to be registered on the Principal Register. Thus, Applicant respectfully requests that the Trademark Office reconsider the refusal based on Section 2(e)(1) and allow this mark to proceed to publication. A notice of appeal has been filed in conjunction with this request.

The present application now seeks registration of the composite mark BETTER PRICE

TOBACCO and Design, which includes stylized font with concentric circles and a raised-ribbon graphic design, for use in connection with cigarette making machines, rolling machines and injecting machines, cigarette papers, filters and tubes, and kits for making cigarettes. When considering Applicant's mark, it is not appropriate to dissect the mark into component parts; rather, it must be considered in its entirety. *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1174 (Fed. Cir. 2004). Applicant respectfully suggests that, when viewed in its proper scope, Applicant's mark creates a distinctive commercial impression that acts as a source identifier. In particular, the graphic design elements combined with the stylized font create a composite mark that conveys a unique and distinctive commercial impression. Therefore, Applicant's composite mark is suitable for registration on the Principal Register.

Thus, when appropriately considering the mark, Applicant believes it is suggestive of the goods of the present application and should the mark therefore be registered. To be sure, if a mark requires "imagination, thought, and perception" to determine the nature of the goods, it is considered suggestive and not merely descriptive. *In re Steelbuilding.com*, 415 F.3d 1293, 1297 (Fed. Cir. 2005). In this case, the overall commercial impression of Applicant's composite mark requires the consumer to use imagination, thought and perception to determine the specific nature of the goods at hand, which include cigarette making machines, rolling machines and injecting machines, cigarette papers, filters and tubes, and kits for making cigarettes. The design mark, composed of the stylized BETTER PRICE TOBACCO wording with circle and ribbon graphic elements, does not immediately describe Applicant's goods, but rather suggests a smoking-related product with a good value. Thus, Applicant's mark when applied to the present goods of the application should be considered suggestive, not merely descriptive.

Furthermore, the mark should not be refused registration as merely a lauditorily descriptive term. The Trademark Office has repeatedly recognized similar marks and found them not to be descriptive, placing them on the Principal Register without disclaimers or requiring proof of acquired distinctiveness. For example, "LOWEST PRICE FIGHTER" was determined sufficiently distinctive for use in connection with cigarettes (Reg. No. 3,259,428), just as "PREMIUM SMOKE AT AN HONEST PRICE" was held distinctive for "tobacco cigarettes" (Reg. No. 2,562,059). Similarly, "BETTER GOLF. BETTER PRICE." is registered for use in connection with golf-related products (Reg. No.

3,417,679), and "BETTER INSURANCE. BETTER PRICES. BETTER VALUE." is registered for use in connection with insurance services (Reg. No. 3,279,222). In the same way, "BETTER PARTS. BETTER PRICES." constitutes a sufficiently distinctive mark for automotive parts, just as "BETTER PRODUCTS AT BETTER PRICES" has been determined distinctive for Christmas trees and decorations. *See also* Reg. No. 3,171,529 ("INCREDIBLE SUSHI AT INEXPENSIVE PRICES" for restaurant services) and Reg. No. 3,198,682 ("SUPER COSTUME SELECTIONS AT SUPER LOW PRICES!" for online retail store services featuring costumes). (Copies of these registration records are attached hereto as Exhibit A). So, too, should Applicant's mark be considered sufficiently distinctive for placement on the Principal Register.

In light of the foregoing, Applicant respectfully requests the Examining Attorney to reconsider the final refusal to register Applicant's mark and withdraw the rejection under Section 2(e)(1), and allow the application proceed to publication.

Dated: September 2, 2009

Respectfully submitted,

By: /Antony J. McShane/

Antony J. McShane
Hillary I. Schroeder
Neal, Gerber & Eisenberg LLP
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Chicago, Illinois 60602
(312) 269-8000 telephone

EVIDENCE

Evidence in the nature of Exhibit A has been attached.

Original PDF file:

http://tgate/PDF/RFR/2009/09/02/20090902175500394911-77442883-001_001/evi_3811514866-172236842_.Exhibit_A.pdf

Converted PDF file(s) (8 pages)

Evidence-1

Evidence-2

Evidence-3

Evidence-4

Evidence-5

Evidence-6

Evidence-7

Evidence-8

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /Antony J McShane/ Date: 09/02/2009
Signatory's Name: Antony J McShane
Signatory's Position: Attorney of Record

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 77442883
Internet Transmission Date: Wed Sep 02 17:55:00 EDT 2009
TEAS Stamp: USPTO/RFR-38.115.148.66-2009090217550039
4911-77442883-4302d227a03016af501e6bda71
9d94391-N/A-N/A-20090902172236842868

EXHIBIT A



United States Patent and Trademark Office

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LOWEST PRICE FIGHTER

Word Mark	LOWEST PRICE FIGHTER
Goods and Services	IC 034. US 002 008 009 017. G & S: Cigarettes. FIRST USE: 20051031. FIRST USE IN COMMERCE: 20051031
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	78712476
Filing Date	September 14, 2005
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	May 23, 2006
Registration Number	3259428
Registration Date	July 3, 2007
Owner	(REGISTRANT) LIGGETT GROUP LLC LTD LIAB CO DELAWARE 100 MAPLE LANE MEBANE NORTH CAROLINA 27302
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Victoria Spier Evans
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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